

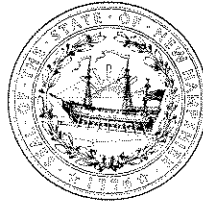
**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

SUBMISSION 654:21

F

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

August 26, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:21, a STATUTE related to the forwarding of overseas citizen voting affidavits, most recently amended by Laws of 1988 Chapter 209 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:21, a STATUTE related to the forwarding of overseas citizen voting affidavits, most recently amended by Laws of 1988 Chapter 209 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 209 (1988) amending RSA 654:21 is attached (Exhibit 654:21 A)

- b) Chapter 436 (1979) recodifying RSA 55-A:05 as RSA 654:21 is attached (Exhibit 654:21 B)
- c) The changes made by amendments to RSA 654:21 are as follows:
 - 1. Chapter 209 (1988) removes the words “...and certificates...” from this statute
 - 2. Chapter 436 (1979) recodified RSA 55-A:03 and RSA 55-A:04 as RSA 654:21
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 209 (Exhibit 654:21 A). The bill was signed into law (by the Governor) on April 29, 1988, pursuant to New Hampshire Constitution Part Second, Article 44.

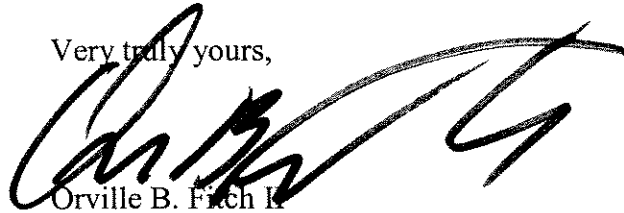
- i) Adoption dates:
 - 1. Chapter 209 (1988) adopted April 29, 1988
 - 2. Chapter 436 (1979) adopted June 25, 1979
- j) Effective dates:
 - 1. Chapter 209 (1988) effective June 28, 1988

2. Chapter 436 (1979) effective July 1, 1979

- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
 - 1. The purpose of the Chapter 209 (1988) change is to remove reference to an absentee certificate, previously required to be submitted by RSA 654:20 but removed by this Chapter (*see submission 654:20*)
 - 2. The purpose of the Chapter 436 (1979) change is to recodify RSA 55-A:05 as RSA 654:21
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) RSA 654:21 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:21 C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:21 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Orville B. Fitch II", with a large, sweeping flourish extending to the right.

Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

90571.doc

[1988

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1988]

CHAPTER 209

CHAPTER 209 (HB 810)

AN ACT RELATIVE TO OVERSEAS VOTERS.

315

Be it Enacted by the Senate and House of Representatives in General Court convened:

209:1 Reference to Canada and Mexico Added. Amend the introductory para-graph of RSA 654:3 to read as follows:

Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled in Canada or Mexico or in any other country outside the continental United States, shall have the right to regis-ter absentee to vote in any federal election in the town or city in New Hampshire in which he had his domicile immediately prior to his departure from the United States, even though he no longer maintains domicile in said town or city and even though his intent to return thereto is uncertain, provided:

209:2 Overseas Voting; Notarized Certificate Deleted. RSA 654:20 is repealed and reenacted to read as follows:

654:20 Affidavit. Any person qualified to vote as an overseas voter in a city or town as provided in RSA 654:3, because he is domiciled in Canada or Mexico or in any other country outside the continental United States, may apply to the city or town clerk or to the secretary of state for an overseas citizens federal election absentee registration affidavit. Such affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit

I, _____, do hereby swear or affirm, under penalty of perjury, the following:

- 1) That I am a United States citizen;
- 2) That I have been domiciled in Canada or Mexico or any other country outside the continental United States since _____ (month) (year);
- 3) That I hold a valid passport or card of identity with Registration No. _____ issued by the United States Secretary of State;
- 4) That, immediately prior to my departure from the United States, I was le-gally domiciled in the state of New Hampshire at the following address:

Street and Number or Rural Route, etc.

City or Town

- 5) That I will be of the age of 18 years or older on election day, have complied with all applicable qualifications and requirements of the state of New Hamp-shire, and am entitled to vote in the next subsequent federal election to be held in said state;

- 6) That I do NOT maintain a domicile, am NOT registered to vote and am NOT voting in any other state, territory, or possession of the United States, or election district thereof;

- 7) That my party affiliation (if any) is _____
- 8) That my permanent address outside the continental United States is:

Street or Route Number

City, Province, Country _____

9) That I hereby make application for the addition of my name to the checklist of _____, New Hampshire, as an overseas citizen living outside the continental United States entitled to vote in any federal election held therein.

Signature of Applicant _____

Date _____

209:3 Overseas Voters; Certificate Deleted. Amend RSA 654:21 to read as follows:

654:21 Forwarding. Each such affidavit shall be directly forwarded to the applicant by the city or town clerk or by the secretary of state.

209:4 Overseas Voters; Certificate Deleted. Amend RSA 654:23 to read as follows:

654:23 Effect. Unless the supervisors of the checklist shall be of the opinion that the applicant does not qualify as an overseas voter in the city or town as provided in RSA 654:3, domiciled in Canada or Mexico or in any other country outside the continental United States, they shall, at their next session for the correction of the checklist subsequent to their receipt of such affidavit properly executed, cause his name to be added to the checklist together with a mark or sign clearly indicating that the application has been entered on the checklist for the purpose of voting in federal elections only. Thereafter, such person shall be entitled to vote by overseas citizens absentee ballot at both federal primary and general elections. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification to the applicant in writing within 7 days stating the reason for that denial.

209:5 Reference to Federal Post Card Application Added. Amend RSA 657:6 to read as follows:

657:6 Procedure by Applicant. An application form for an absentee ballot shall be mailed or delivered to any person who applies therefor to the secretary of state or to any town or city clerk. It shall be filled out by the applicant and sent to the clerk of the town or city in which he desires to vote. Alternatively, a person may apply for an official absentee ballot by sending to said clerk a written statement containing the information required by the appropriate paragraph of RSA 657:4, or by the federal post card application.

209:6 Overseas Voters; Affidavit Required. Amend RSA 657:8 to read as follows:

657:8 Overseas Voting. Prior to any federal election, the secretary of state shall prepare the following forms in such quantity as he deems necessary:

I. Overseas citizens federal election absentee ballots as provided in RSA 656:34 for citizens who are domiciled in Canada or Mexico or in any country outside the continental United States.

II. Affidavit envelopes of sufficient size to contain the ballots on which shall be printed the following:

(a) For Voters Who Are Registered.

Overseas Citizen. A person desiring to vote by overseas citizens federal election absentee ballot who is a registered voter in the town or city in which he desires to vote shall fill out and sign the following certificate:

I do hereby certify under the penalties of perjury that I am a duly qualified overseas citizen voter registered as such in the city or town of _____, New Hampshire; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the overseas citizens federal election ballot

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by RSA 657:4, a town or city clerk shall send the materials provided for in RSA 657:8 or 657:9, as applicable, regardless of whether the applicant appears on the checklist. Whenever an armed services voter requests a state general election ballot prior to October 1 to be mailed to an address in Canada or Mexico or in any other country outside of the continental United States, he shall be sent the same ballot as provided in RSA 656:34.

209:11 Federal Post Card Applications. Amend RSA 657 by inserting after section 19 the following new section:

657:19-a Federal Post Card Application. An armed services voter or federal overseas citizen voter who is domiciled in Canada or Mexico or in any other country outside the continental United States qualified to vote in New Hampshire may request an absentee ballot by completing a federal post card application form provided by the United States government, and sending it to the town or city clerk of his last domicile. The applicant may request an absentee ballot for all elections in which he is qualified to cast a ballot during the calendar year.

209:12 Reference to Overseas Citizens Federal Election Absentee Ballots Added; Notary Requirements Deleted. Amend RSA 657:20 and 21 to read as follows:

657:20 Procedure by Voter. After marking his ballot, an armed services voter or a federal overseas citizen voter shall seal the same in the affidavit envelope. If he is a registered voter, he shall execute the appropriate affidavit and return the ballot as hereinafter provided. If the voter is not registered in the town in which he desires to vote, he shall execute the appropriate affidavit. If the armed services voter or federal overseas citizen voter, because of blindness or other physical disability, is unable to mark his ballot, an official empowered to administer oaths may assist him to mark his ballot as directed by the voter. The official shall then certify on the outside thereof that it was marked with his assistance and shall thereafter give no information regarding the same. Having executed the affidavit, the voter shall enclose and seal said envelope in the return envelope. He shall then endorse thereon his name, address and voting place and shall mail the envelope or personally deliver it to the city or town clerk from whom it was sent.

657:21 Registration of Voters. Upon receipt of a return envelope containing an armed services or overseas citizen federal election absentee ballot, the clerk of the city or town shall open and retain said envelope and deliver the affidavit envelope to the supervisors of the checklist of the voting place indicated thereon. If the voter is not registered, the appropriate affidavit appearing on said envelope, if properly executed, shall be prima facie evidence of the voter's qualifications to become a voter and his name shall be added to the checklist. The supervisors of the checklist shall then return the affidavit envelopes unopened to the city or town clerk who shall see that they agree in number with the mailing envelopes. Said clerk shall attach the application for an armed services or overseas citizen federal election absentee ballot submitted by said voter to the 2 corresponding envelopes and retain them until election day.

209:13 Repeal. RSA 654:22, relative to executing affidavits and certificates for overseas voters, is repealed.

209:14 Effective Date. This act shall take effect 60 days after its passage.

[Approved April 29, 1988.]

[Effective Date June 28, 1988.]

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provided in RSA 654:3 may apply to the city or town clerk or to the secretary of state for an overseas citizens federal election absentee registration affidavit. Such affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit

- I, _____, do hereby depose as follows:
- 1) That I am a United States citizen;
 - 2) That I have been domiciled outside the United States since _____ (month) _____ (year);
 - 3) That I hold a valid passport or card of identity with registration No. _____ issued by the United States Secretary of State;
 - 4) That, immediately prior to my departure from the United States, I was legally domiciled in the state of New Hampshire at the following address.

Street and Number or Rural Route,
etc.

City or Town

- 5) That I will be of the age of 18 years or older on election day, have complied with all applicable qualifications and requirements of the state of New Hampshire, and am entitled to vote in the next subsequent federal election to be held in said state;

6) That I do NOT maintain a domicile, am NOT registered to vote and am NOT voting in any other state, territory, or possession of the United States, or election district thereof;

- 7) That my party affiliation (if any) is _____
- 8) That my permanent address outside the United States is: _____

Street or Route Number

City, Province, Country

- 9) That I hereby make application for the addition of my name to the checklist of _____, New Hampshire, as an overseas citizen entitled to vote in any federal election held therein.

Signature of Applicant

- II. There shall be printed below the affidavit described in the preceding section the following certificate:

Certificate

I, _____, the undersigned officer, do hereby certify that on the _____ day of _____, 19____, the above named, _____, having satisfied me as to his identity, subscribed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

Signature of Officer

Title

654:21 Forwarding. Each such affidavit and certificate shall be directly

forwarded to the applicant by the city or town clerk or by the secretary of state.

654:22 Execution of Affidavit and Certificate. Such affidavit shall be executed before a person authorized to perform notarial acts pursuant to the provisions of RSA 456-A. Such officer, after executing the certificate, shall attach thereto proof of his official capacity and shall forward the affidavit and certificate to the clerk of the town or city named for submission to the supervisors of the checklist.

654:23 Effect. Unless the supervisors of the checklist shall be of the opinion that the applicant does not qualify as an overseas voter in the city or town as provided in RSA 654:3, they shall, at their next session for the correction of the checklist subsequent to their receipt of such affidavit and certificate properly executed, cause his name to be added to the checklist together with a mark or sign clearly indicating that the applicant has been entered on the checklist for the purpose of voting in federal elections only. Thereafter, such person shall be entitled to vote by overseas citizen absentee ballot at federal elections. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification to the applicant in writing within 7 days stating the reason for that denial.

Voters in Unincorporated Places

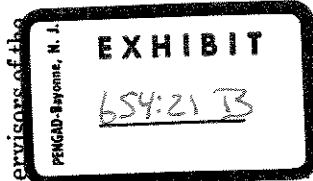
654:24 Registration. Inhabitants of unincorporated places shall register to vote as provided in RSA 668.

Checklists: All State Elections

654:25 Preparing Checklist. The secretary of state shall issue and distribute guidelines for the composition and style of checklists and for the maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which is to be maintained and updated by the supervisors. The secretary shall establish standard forms and procedures for the use of the supervisors for the maintenance of such information. The information to be maintained and updated shall include the full name, address and party affiliation, if any, of each voter on the checklist and such other information as the secretary requires. The supervisors shall use the information so maintained and updated to prepare the checklist for all state elections.

654:26 Posting Checklist. The supervisors shall make and post copies of the current checklist at 2 or more public places in town at least 30 days before the day of any state election.

654:27 Sessions for Correction. In cities and towns, the supervisors of the checklist shall be in session for the correction of the checklist at a place in the city or town on at least 2 occasions before any state election, the last of which shall be on the Saturday 10 days prior to the election, at which all hearings shall be finally closed. The first session shall be held on the third Tuesday preceding the day of election and shall take place between 6:00 p.m. and 9:00 p.m. and shall be adjourned on the next day or days at the same time as will permit all claims to be decided. Notice of the day, hour and place of each session of the supervisors shall be given upon the checklists first posted and published in a newspaper of general circulation in the city or town prior to each such session. The reconvening of any session which is adjourned shall not require the publication of notice.





U.S. Department of Justice

Civil Rights Division

EXHIBIT

654:21 C

PENGAD 800-631-6889

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

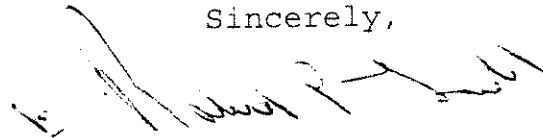
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

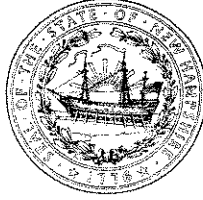
Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

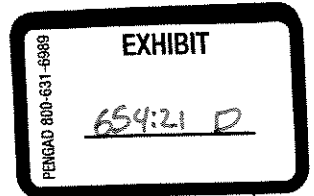
**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



KELLY A. AYOTTE
ATTORNEY GENERAL

MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL



News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov